

E-FILED on: 12/29/2008

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

DAMAR PETROLEUM, INC.,

Plaintiff,

v.

CONOCOPHILLIPS COMPANY, a Texas
Corporation and DOES 1 through 10,

Defendants.

No. C-08-05436 RMW

ORDER DENYING *EX PARTE*
APPLICATION FOR A TEMPORARY
RESTRAINING ORDER**[Re Docket No. 4]**

Plaintiff Damar Petroleum, Inc. filed this action on December 2, 2008 against ConocoPhillips Company seeking various types of relief for ConocoPhillips' alleged plan to drastically raise the rent on Damar's two gasoline stations located in San Jose, California. Damar further alleges that it is a petroleum franchisee of ConocoPhillips under the Petroleum Marketing Practices Act ("Act") and that ConocoPhillips' intended action violates the Act and California Corporations Code §§ 31000 *et seq.* Damar seeks, among other relief, injunctive relief including an immediate temporary restraining order to prevent ConocoPhillips from raising the rent on the two stations, which are scheduled to take effect beginning on January 1, 2009. Damar asserts that "CONOCO's unprecedented increase in the rent at Plaintiff's stations will destroy the goodwill value of Plaintiff's business and cause Plaintiff serious financial injury." Compl. ¶ 50.

ORDER DENYING *EX PARTE* APPLICATION FOR A TEMPORARY RESTRAINING ORDER
No. C-08-02725 RMW
TSF

1 Although Damar filed its action on December 2, 2008, it apparently has yet to serve
2 ConocoPhillips. On Christmas eve, December 24, 2008, at 4:18 p.m., it filed an *ex parte* application
3 for a temporary restraining order. It served the documents by overnight mail on Glynn & Finley,
4 LLP, whom Damar believes represents ConocoPhillips.

5 Although Damar's complaint may have merit, there is no excuse for delaying the application
6 for a temporary restraining order until the Christmas and New Year's holidays. Further, there is no
7 showing that Damar's financial condition is such that it will be irreparably injured if the first
8 payment under the allegedly illegal rent increase falls due on January 1, 2009. Therefore, it is
9 hereby ordered that Damar's application for an *ex parte* temporary restraining order is denied
10 without prejudice. It may be renewed on or after January 6, 2009 before the assigned judge with
11 appropriate notice to defendant's counsel.

12
13 DATED: 12/29/2008



RONALD M. WHYTE
United States District Judge

TSF
Chambers of Judge Whyte